

IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1856.—Ordered to be printed.

MR. CLAY made the following

REPORT.

[To accompany Joint Resolution S. 6.]

*The Committee on Pensions, to whom was referred (S. R. 6) joint resolution declaring in what manner the pension laws for the benefit of the Cherokee Indians shall be executed, beg leave to report:*

That they have had the same under consideration, and are satisfied of the justice and propriety of the construction given by the resolution to the act approved April 14, 1842, entitled "An act to provide for the allowance of invalid pensions to certain Cherokee warriors under the provisions of the fourteenth article of the treaty of 1835."

They find the whole subject so clearly and ably discussed in the following letter from Hon. L. P. Waldo, while Commissioner of Pensions, dated July 30, 1855, that they deem it unnecessary to enlarge upon the subject.

They report the resolution back without amendment, and recommend its passage.

PENSION OFFICE, July 30, 1856.

SIR: I have carefully examined the application of Lou-loo, or Oo-la-yah-tah, a Cherokee warrior, of the State of North Carolina, for an invalid pension, under the act of April 14, 1842, on account of a wound claimed to have been received by him at the battle of the Horse Shoe, March 25, 1814.

The claimant filed his declaration in the year 1853, and while the claim was pending, and before satisfactory evidence had been furnished to establish it, he died in March, 1854. His widow, after his death, filed an application for the amount of pension due her husband at the time of his death, and filed the necessary evidence to show that her said husband was a Cherokee warrior; that he was engaged on the side of the United States in the late war with Great Britain and the southern Indians; was wounded in such service on the 25th day of March, 1814, at the battle of the Horse Shoe, and was, consequently, in his lifetime, and at the time of his decease, entitled to receive a

pension under the act aforesaid, for one-half debility, from March 25, 1814, to the date of his death. If, therefore, Lou-loo, or Oo-la-yah-tah, were now living he would be inscribed upon the list of invalid pensioners, and paid his pension at the rate aforesaid, from the day he was disabled. But inasmuch as he is dead, it becomes an important question to whom his pension can now be paid, if at all. His widow claims the amount due for herself, as her own money, and the natural impulse of the heart would be to give her the money. *But it has heretofore been the practice of this office to pay the pension under circumstances precisely parallel to the executor or administrator of the deceased.* This practice, I suppose, arose from the fact that the act of March 2, 1829, authorized the arrears of pension due a deceased invalid to be paid, in certain cases, to his legal representatives. But an examination of that act will satisfy any person that it was not intended to embrace a case where a person was not admitted to the list of invalid pensioners in his lifetime. The second section of that act relates to another class of pensioners. Nor is this case within the provisions of the act of June 19, 1840, which act provides for the payment of arrears of pension where no widow survives. Indeed, I have been unable, from a careful examination of this matter, to find any act regulating the payment of money under the circumstances in which this case is placed. I am, therefore, of opinion that it is not provided for by law, and that the payment of the money cannot be made without the interposition of Congress. If it be paid to the widow in accordance with her claim, the executor or administrator may have reason to complain, and will quote the precedents of this office in favor of the money being paid to him. If it be paid to the legal representatives of the deceased, the whole amount may be absorbed in the debts against his estate, and no part be received by his widow. Congress has, in other classes of pensions, declared how the payments due at the decease of the pensioner should be paid. I think it is their prerogative to prescribe the persons who shall receive the pension in this case. I have no doubt the proper action will be had if the matter is brought to their notice.

In the view here taken, I have the honor to inform you that my opinion is concurred in by the Secretary of the Interior, who also concurs with me in the manifest propriety of Congress acting favorably in this case.

I am, respectfully, your obedient servant,

L. P. WALDO, *Commissioner.*